

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Year 2000 Biennial Regulatory Review -)	WT Docket No. 01-108
Amendment of Part 22 of the Commission's Rules)	
to Modify or Eliminate Outdated Rules Affecting)	
the Cellular Radiotelephone Service and other)	
Commercial Mobile Radio Services)	

To: The Commission

LIMITED OPPOSITION TO PETITION FOR RECONSIDERATION

Rural Cellular Association ("RCA")¹, by its attorneys, respectfully submits this limited opposition to the petition submitted to the Federal Communications Commission ("FCC" or "Commission") by AT&T Wireless Services, Inc. ("AWS") seeking reconsideration of certain aspects of the Commission's *Part 22 Order* issued in the above-captioned proceeding.²

I. Introduction

AWS requests that the Commission reduce the sunset period for the cellular analog requirement from five years to no more than 30 months. RCA disagrees and submits that the current sunset date is appropriate and, if circumstances warrant at the time, the analog service requirement should be extended. AWS also requests that the Commission reinstate the electronic serial number

¹ RCA is an association representing the interests of small and rural wireless licensees providing commercial services to subscribers throughout the nation. Its member companies provide service in more than 135 rural and small metropolitan markets where approximately 14.6 million people reside. RCA was formed in 1993 to address the distinctive issues facing wireless service providers.

² *Year 2000 Biennial Regulatory Review – amendment of Part 22 of the Commission's Rules to Modify or Eliminate Outdated Rules Affecting the Cellular Radiotelephone Service and other Commercial Mobile Radio Services*, 17 FCC Rcd 18401 (2002) ("*Part 22 Order*").

(“ESN”) “hardening” rule and to extend the requirement to all Commercial Mobile Radio Service (“CMRS”) providers. RCA agrees with AWS in this regard and supports a reinstatement of the ESN hardening rule as a means to deter fraud.

II. The Sunset Date for Cellular Analog Service Should Not Now be Altered

In its *Part 22 Order* the Commission decided to end the analog service compatibility requirement contained in Section 22.901 of its Rules. 47 C.F.R. §22.901. Observing that the mandate for analog services (“AMPS”) was beginning to cause inefficiencies for some carriers, and that an indefinite retention of the analog requirement was not warranted, the Commission adopted a five-year sunset for the analog compatibility mandate.³ But the Commission also recognized the need for a “reasonable transition period”⁴ and, even as it concluded that roaming was not dependent on the analog requirement, it stated that

...a transition period permits carriers to evaluate their current and future technology choices as well as those of their current roaming partners. Carriers will have the opportunity to negotiate new contracts where needed to ensure the availability of roaming services to their customers...By the end of the transition period, these [multimode/multiband] handsets should be widely available and customers may choose to migrate to these new handsets depending on their roaming needs...Therefore, we believe that consumers, in both RSAs and MSAs, will continue to roam nationwide after a five-year transition period. (*Part 22 Order*, para. 17)

Quite clearly, carriers, especially rural carriers, cannot implement changes overnight. The Commission specifically recognized this fact as it balanced many competing interests and settled on a five-year period as a reasonable transition time.

³ The Commission adopted a sunset date of five years from the effective date of the *Part 22 Order* (i.e. five years after sixty days after the date of publication in the Federal Register) as the end of the analog compatibility requirement. Publication occurred on December 17, 2002, Federal Register Volume 67, No. 242. Therefore the date of sunset is February 15, 2008.

The Commission made clear that its principle concerns in this area are the needs of consumers. In explaining its conclusion to adopt a five-year transition period the Commission said it is

...aware that there are particular classes of consumers, such as those that use emergency-only telephones and persons with hearing disabilities, who do not currently have readily available digital alternatives and would be unduly affected by the immediate elimination of analog service. (*Part 22 Order*, para. 22)

There is no evidence that the needs of such consumers have changed since adoption of the *Part 22 Order*. Emergency-only telephones still make use of AMPS technology and cannot be replaced until funding is available for a transition. And there is insufficient evidence that persons with hearing disabilities have access to hearing aid-compatible digital devices. Certain carriers were directed by the Commission to file reports on this matter. AWS makes no reference in its petition to its having filed such a report and neither does it represent that persons with hearing disabilities currently have access to hearing aid-compatible digital devices. Rather, it expects manufacturers to begin selling digital versions of suitable phones “very soon.”⁵ Whether that occurs as AWS expects is an obvious question, but to layer on top of an equipment availability expectation a second projection that persons with hearing disabilities will replace their wireless phones within 2.5 years stretches the point beyond reasonable bounds and better makes the case for preserving the five-year transition period than for shortening it to 30 months, beginning as of February 2003.

AWS argues that the analog requirement should be eliminated because the rule no longer serves its original purpose.⁶ The suggestion is that the Commission may only retain the rule if such

4 *Part 22 Order*, para. 8.

5 Petition, p. 6.

6 Petition, p. 5.

action is required to fulfill the original purpose of the rule. Under that reasoning, there may be no transition period whatsoever unless the Commission finds the rule is necessary to assure nationwide cellular service availability. Certainly the Commission's role as guardian of the public interest where it has jurisdiction over telecommunications matters must be recognized and exercised according to its reasoned decision making. To suggest on such basis that the Commission lacks authority to retain the rule, or that the transition period must be shortened to 30 months instead of 60 months, fails to recognize the Commission's ultimate responsibility to act in the public interest.

Finally, AWS restates an argument considered by the Commission earlier, claiming that the analog rule imposes a discriminatory burden on cellular carriers. The Commission is well aware that cellular licensees must set aside a portion of their spectrum to maintain analog facilities even though a more efficient use of the spectrum for some cellular carriers may be to discontinue analog service immediately.⁷ Were it not for the need to protect the interest of certain consumer groups the Commission would have eliminated the analog requirement in less than 5 years' time, perhaps in less than 30 months' time. But the Commission balanced all relevant factors in arriving at its decision to provide for a five-year transition period before the analog compatibility standard would sunset. And the Commission reserved the option to revisit its sunset decision if, for example, the availability of digital hearing-aid compatible devices is delayed. If any change should be made, the Commission anticipated a longer transition period, not a shorter one as AWS suggests.

III. Reinstatement of the ESN Hardening Rule Can Deter Fraud

The *Part 22 Order* also eliminated Section 22.929 of the FCC's rules, 47 C.F.R. §22.929, which set forth electronic serial number design requirements for manufacturers of cellular

telephones. The Commission reasoned that successful anti-fraud techniques have been developed to prevent cellular cloning fraud, and that the rule had the effect of preventing carriers from deploying advanced technologies such as smart cards.

RCA agrees with AWS that the rule can be an effective deterrent to theft and, if a phone is stolen, that a tamper-proof ESN is an important aid to prevention of fraud. RCA members are smaller carriers who typically do not have the means or resources to institute the same types of fraud detection measures as do the nationwide wireless carriers. Among the most effective fraud prevention measures was the tamper-proof ESN to stop the reuse of stolen wireless devices. RCA respectfully urges the Commission to reconsider this matter and reinstate the ESN hardening rule for all of the reasons AWS provides in its petition.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Loren Costantino, an employee in the law offices of Lukas, Nace, Gutierrez & Sachs, Chartered, do hereby certify that I have on this 1st day of April, 2003, sent by U.S. Mail, a copy of the foregoing LIMITED OPPOSITION TO PETITION FOR RECONSIDERATION to the following:

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